IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13059 of 2003

to

SPECIAL CIVIL APPLICATIONNo 13068 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUTEX COOPERATIVE BANK LTD

Versus

SAI CORPORATION

Appearance:

1. Special Civil Application No. 13059 of 2003

G S THAKKAR for Petitioner No. 1

MR AMIT V THAKKAR for Respondent No. 1-6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 12/10/2004

COMMON ORAL JUDGEMENT

In all the petitions under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Learned District Judge, Surat dated 28.8.2003 passed in Arbitration Applications No.81 of 2003 to 89 of 2003 by which the Learned District Judge has passed an order of maintenance of status quo with regard to the property in question.

2. The petitioner had initiated arbitration proceedings under Section 84 of the Multi-State Cooperative Societies Act, 2002 (hereinafter referred to as "Act") by way of Arbitration Petition Nos.1279 of 2003 to 1288 of 2003. The Arbitrator is appointed under Section 84(4) of the Act. In the said arbitration petitions, the petitioner bank had submitted application for attachment before award under Section 96 of the Act and during the pendency of the application for attachment before award, the Arbitrator has passed an order of attaching the property and the applications for attachment before award are yet to be decided and disposed of by the Arbitrator. After the order of attachment of the property in question came to be passed during the pendency of the attachment before award, it appears that the respondents had submitted an application under Section 9 before the District Court under the provisions of the Arbitration & Conciliation Act, 1996 and requested the Learned District Court, Surat to pass an appropriate order by way of interim measure and in that application, the District Court, Surat has passed the impugned order on 28.8.2003 directing to maintain status quo with regard to the property in question. That order is under challenged by way of this Special Civil Application under Article 227 of the Constitution of India.

3. Shri G.S.Thakker, Learned Advocate appearing on behalf of the petitioner bank had submitted that in view of the provisions of the Act, the applications under Section 9 of the Arbitration & Conciliation Act, 1996 before the District Court for interim measure is not maintainable and the District Court would not have any jurisdiction to entertain any application under Section 9 of the Arbitration Act. He has further submitted that under Section 96 of the Act, there is a special power given for attachment before award and even as per Section 84(5) it is so stated that save as otherwise provided under this Act, the provisions of Arbitration & Conciliation Act, 1996 shall apply to arbitration under this Act as if the proceedings for arbitration were

referred for settlement for decision under the Arbitration & Conciliation Act, 1996. When the powers are conferred to the arbitrator under Section 96 of the aforesaid Act of 2002 for passing an order of attachment before award, the District Court would not have any jurisdiction to pass an order under Section 9 of the Arbitration Act with regard to passing of any order with regard to interim measure. This Court while admitting the present petitions passed the order on 23.9.2003 which reads as under:-

"Having heard learned counsel Mr. Thakker for the petitioner as well as Mr. Shastri for the respondent, it prima facie appears that learned District Judge has no jurisdiction to entertain the appeal, much less to pass any interim order in the matter arising from the order of attachment before award in Arbitration Petition under Multi State Co-Operative Societies Act, 2002 nor does it primafacie appears that there is any jurisdiction under section 9 of the Arbitration and Conciliation Act, 1996 because the language of section 9 of the conciliation Act gives power to the court at any time after the arbitral award but before it is enforced in accordance with section 36. Admittedly, there is no arbitral award and, therefore, it can not be said that as per section 9, in the present facts and circumstances, the jurisdiction of the District Court can be invoked by the respondent herein.

4. Hence, rule, returnable on 15th October, 2003. By way of interim relief, the proceedings of the concerned connected applications pending before the Court of District Judge, Surat shall remain stayed and the ad-interim order passed by the learned District Judge in all such applications shall also remain stayed and suspended with the clarification that:

(1) The respondent shall furnish a solvent security to the Arbitral Tribunal as per the order dated 14th August 2003 passed by the Arbitrator and the order qua injunction shall continue to operate.

(2) The solvent security to the satisfaction of the Arbitrator shall be accepted, but after hearing the Bank as well as the petitioner.

(3) Both the sides will be at liberty to raise contentions available under the law, below application for attachment before the award and the learned Arbitrator shall decide the same in accordance with law.

(4) If the security to the satisfaction of the Arbitrator is furnished by the respondent, it would be open to the respondent, who are defendants in the arbitral proceedings, to move the learned Arbitrator for removal of the attachment qua the factory which is already attached.

(5) The attachment qua other two factories which was stayed at the time when this Court passed the first order, will continue for a further period of 15 days from today as time is now given to furnish security as observed earlier.

5. In view of the order passed in main Special Civil Applications, no further order is required to be passed in Civil Applications No.6503/03, 6505/03, 6507/03, 6508/03, 6509/03, 6510/03, 6511/03, 6512/03, 6513/03 and 6514 of 2003. Hence these Civil Application shall stand disposed of accordingly."

6. Shri Amit Thakker, Learned Advocate appearing for the respondents had submitted that as per Section 84(5), the provisions of the Arbitration & Conciliation Act, 1996 would be applicable and if that is so then the application submitted by the petitioner under Section 9 for interim measures before the District Court would be maintainable and therefore, the application submitted by the petitioner under Section 9 is maintainable and the order passed by the District Court directing to maintain status quo during the pendency of the application under Section 9 would be maintainable.

7. Heard the Learned Advocates appearing for the parties. It is an admitted position that under Section 96 of the Act, the Arbitrator has jurisdiction to pass order with regard to attachment before award. Multi-State Cooperative Societies Act, 2002 is a Special Act. It is an admitted position that the application for attachment before award is pending before the Arbitrator and the Arbitrator has yet to pass a final order on the application for attachment before the award and only order was passed by the Arbitrator with regard to attachment till the application for attachment before award was passed and so the application for attachment of award is yet to be finally decided and disposed of by the Arbitrator. While staying the adinterim order passed by the Learned District Judge, this Court has clarified that both the sides will be at liberty to raise the contentions available under the law below application for

attachment before award and the Learned Ar.....

decide the same in accordance with law. In that view of the matter, without entering into the larger question with regard to the maintainability of the application submitted by the respondent before the Learned District Judge under Section 9 of the Arbitration & Conciliation

Act, 1996, it is directed to the Arbitrator to decide and dispose of the application for attachment before award finally within a period of three months from the date of receipt of this order. Until the applications for attachment before award are decided, the order of attachment with regard to property in question passed by the Arbitrator would be continued and the Arbitrator is directed to decide and dispose of the application for attachment before award in accordance with law and on merits and without in any way being influenced by the fact that this Court has passed an order to continue the order of attachment till the application for attachment before the award is decided.

8. At this stage, Shri Amit Thakker, Learned Advocate appearing for the respondents has submitted that in view of the order passed by this Court in the present petitions today, he would withdraw the application submitted before the District Court, Surat under Section 9 of the Arbitration & Conciliation Act, 1996 without conceding that the application under Section 9 before the District Court is not maintainable. As stated above, this Court has not gone into the larger question as to whether the application under Section 9 of the Arbitration & Conciliation Act, 1996 submitted by the petitioner is maintainable or not. That question is kept open and it may be decided in appropriate case. Liberty to apply in case of difficulty to either parties. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah, J)
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